

# EXHIBIT A

**EXPERT REPORT OF ALTON BROWN, JR.**

*MST, LLC v. NALT et al.*, United States District Court, District of South Carolina, Civil Action No.: 22-cv-00874-DCN



24 August 2024

Nelson Mullins  
Attn: Mr. Wesley Moran  
wes.moran@nelsonmullins.com

**RE: Weehaw Plantation Site Assessment & Expert Report  
Georgetown County, South Carolina**

Dear Mr. Moran:

At your request, Resource & Land Consultants (RLC) conducted a site assessment and evaluated the conservation benefits of the 1995 Conservation Easement and 2008 Amendment of the same as they relate to Weehaw Plantation and the adjacent 65-acre parcel owned by Georgetown Memorial Hospital ("Hospital Parcel").

This assessment included a review of the 1995 Conservation Easement, a review of the 2003 Baseline Documentation prepared by North American Land Trust ("NALT"), a review of the 2008 Amendment, and a review of the 2022 wetland delineation package prepared by The Brigman Company. In addition, RLC reviewed the USGS Topographic Map, NRCS Soil Survey, USFWS National Wetlands Inventory, available aerial imagery, NOAA Topographic Lidar for the project area, available historic aerial imagery, U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Conservation System (IPaC), the SC Natural Heritage Species Reviewer, and South Carolina Historic Properties database.<sup>1</sup>

Following a review of the documents and mapping information described above, RLC visited Weehaw Plantation and the Hospital Parcel to field review current site conditions and habitats within the property. The field visit occurred on 30 May 2024 and included a vehicular and pedestrian tour of the property where current site conditions and habitats were documented.

Based on this analysis, I agree with the conclusions reached by NALT that are reflected in the 2008 Amendment: that the 2008 Amendment resulted in a greater ecological benefit to the overall Conservation Area and further advanced and protected the Conservation Purposes of the 1995 Conservation Easement.

**I. Qualifications**

I am graduate of the University of Georgia Warnell School from where I obtained a degree of Bachelor of Science in Forest Resources in 1997. Over my 27-year professional career, I have provided services

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<sup>1</sup> Please note that RLC did not have access to electronic survey files and estimated acreages for the purposes of assessing the value of the 1995 easement and 2008 easement. The acreages provided in this report were calculated using available documents, maps, GIS, Tax Assessor and mapping data.

associated with environmental and natural resources consulting. From 1997 thru 2007, I served as project manager and principal for two environmental consulting firms and managed projects in South Carolina, Georgia, Florida and Alabama. In 2007, I co-founded RLC, which is a natural resources consulting firm focusing on state and federal aquatic resources regulations compliance, permitting and mitigation. I have participated in a wide variety of projects and have served clients in the private residential, commercial, industrial, mining, and forest industries as well as governmental clients from local municipalities to state agencies. I have provided technical assistance and completed assessments for numerous conservation easements associated with development tracts, mitigation sites and mitigation banks. I am a Society of Wetland Scientists certified Professional Wetland Scientist (PWS). A copy of my CV is attached to this report as Appendix I.

## **II. Statement of Compensation**

I am being compensated \$295.00 per hour, my standard hourly rate, for the time I have spent and will spend working on this case, including reviewing documents, conducting research, preparing my report, reviewing testimony, and providing testimony at a deposition and trial. I am also being reimbursed any out-of-pocket costs which are directly associated with my work as an expert witness on this matter. My compensation is unaffected by the outcome of this case.

## **III. Factual Background**

In 1995, the then owners of Weehaw Plantation, Larry and Judy Young, granted North American Land Trust ("NALT") a conservation easement by way of an executed Conservation Easement and Declaration of Restrictive Covenants ("1995 Conservation Easement") encumbering approximately 788 acres of Weehaw Plantation. At that time, Weehaw Plantation was comprised of approximately 932.56 acres and extended from the Black River and Pee Dee River to North Fraser Street and Wedgefield Road within Georgetown County, South Carolina (Latitude 33.40890°, Longitude -79.268128°). As documented in the 2003 Baseline Documentation prepared by NALT, the 1995 Conservation Easement placed on Weehaw Plantation is one of NALT's most significant protection efforts in coastal South Carolina, and the site contains nearly 800 acres of pristine wetlands and pine dominated uplands that provide valuable habitat for a variety of South Carolina indigenous flora and fauna. The conservation purposes of the 1995 Conservation Easement ("Conservation Purposes") were twofold: (1) the protection of a relatively natural habitat of fish, wildlife, plants and the ecosystems present at Weehaw Plantation, and (2) the preservation of open space and ecologically significant land which could not have otherwise been accomplished.

In December 2008, NALT and the then owners of Weehaw Plantation, Kyle and Jacqueline Young, amended the conservation easement to exclude approximately 56.75 acres, of what is now the Hospital Parcel, located on the eastern portion of the property, adjacent to North Fraser Street and Wedgefield Road (Latitude 33.414363°, Longitude -79.281827°), to facilitate the planned development of a new Georgetown Memorial Hospital Campus ("2008 Amendment"). In exchange for removing the restrictions of the 1995 Conservation Easement on this 56.75 acres of the Hospital Parcel, the 2008 Amendment extinguished certain reserved rights related to the development of five single-family dwellings within the remaining portions of Weehaw Plantation. Following the execution of the 2008 Amendment, Georgetown Memorial Hospital purchased the 65-acre Hospital Parcel from Kyle and Jacqueline Young.

#### IV. Assessment and Opinions

Following the document review and site visit, RLC evaluated the overall conservation benefits of both the 1995 Conservation Easement and 2008 Amendment. While there are an unlimited number of factors that could be evaluated, RLC established general factors for which functions could be assessed and low, medium or high conservation benefit values could be assigned. The factors considered for this assessment were:

- **Biodiversity and Habitat Quality:** The diversity of habitats, quality of habitats and general ecosystem services were evaluated. Disturbed sites that have experienced clear-cut vegetation, significant ditching, significant soil disturbance, (i.e. bedding, filling, grading, excavating), cleared and maintained utility easement areas, and contain conflicting land uses, etc. are generally assigned a low value. Sites with minor ditching, selective clearing or thinning of vegetation, timber management in accordance with forestry BMP's, intact floodplain and general water quality benefits are generally assigned a moderate value. Sites that include pristine (undisturbed) vegetative conditions, no effective drainage, minor selective cutting and planting, intact wetland and upland habitats, threatened and endangered species and/or potential habitat, intact floodplain, and general water quality benefits are generally assigned a high value. The U.S. Fish and Wildlife Service's (USFWS) Information, Planning, and Conservation System (IPaC) and the SC Natural Heritage Species Reviewer database was reviewed to determine plant and animal species as endangered or threatened for purposes of this assessment.
- **Cultural/Archaeological and Recreation:** South Carolina has a rich and diverse cultural history, including Native American, African American, and European influences. Protecting these resources provide the opportunity for scientific research, providing insights into ancient technologies, social structures, and environmental adaptations enable us to understand human behavior, migration patterns, and interactions between different groups. These resources also promote tourism, contributing to the local and state economy, and honor the state's cultural legacy and contributions. A preliminary assessment of cultural and archaeological resources was conducted by reviewing the South Carolina Historic Properties database.
- **Size and Contiguity:** Larger contiguous parcels of land are generally more valuable for conservation due to their ability to support larger populations of species and maintain ecological processes. Large, contiguous areas of undeveloped land provide essential habitats for diverse plant and animal species, supporting higher levels of biodiversity compared to fragmented habitats. The protection and preservation of contiguous undeveloped areas provide essential habitats for diverse plant and animal species, supporting higher levels of biodiversity, and maintaining wildlife corridors which is critical for migration, breeding, and maintaining genetic diversity. Conversely, fragmented or isolated areas lead to changes in microclimate conditions, increase predation and competition, alter hydrologic cycles, disrupt pollination and seed dispersal and lead to increased human-habitat/wildlife conflicts. Fragmentation can also degrade the scenic and recreational value of a particular landscape or viewshed.
- **Location & Degree of Threat:** This factor assess the value of the site considering the location and threat of destruction. That is, the conservation value of the property increases as the threat of destruction, development, or adverse modifications increases.

**Assessment of the Conservation Benefit of the 1995 Conservation Easement:** The 1995 conservation easement area was comprised of approximately 788 acres generally located west of the Black River and Pee Dee River and east of North Fraser Street and southeast of Wedgefield Road ("Conservation Area"). NALT documented the ecological significance of the property to include important, ecologically stable habitat for flora and fauna, including particularly waterfowl, that are native to the "low country" of South Carolina. Additionally, the site contained remnants of an 18th century formal garden including ancient camellias and specimen live oak trees. It is a unique and environmentally sensitive land area because it is a portion of the estuaries of the Black River and Pee Dee River. The site also offers valuable scenic vistas that can be seen from the Intracoastal Waterway, the Black River and the Pee Dee River and Highways 701 and S-22-325.

The habitat description attached to the 1995 Conservation Easement indicated that the property included palustrine emergent persistent regularly flooded wetland (uncontrolled rice fields), palustrine emergent persistent artificially flooded wetlands (controlled rice fields), palustrine forested deciduous irregularly flooded, palustrine forested deciduous seasonally flooded, and riverine tidal open water. Upland habitats included in the habitat description were heavily thinned mixed pine upland, 160 acres of mixed pine upland, young pine, oak-pine hammock, and open/maintained wildlife food plots. Vegetation description and species composition of each habitat was provided was in the document titled *Habitats-Weehaw Plantation Easement*. The documents and surveys associated with the easement also confirmed that the property consisted of a natural habitat of fish, wildlife, plants, and similar ecosystems and will yield a significant public benefit. Article B Grantors Declaration of Covenants and Restrictions outlined uses and activities prohibited by the easement. *Article C Reserved Rights* documented that the grantor maintained the right to maintain the lodge and a recreational area as well as to erect, maintain, repair, and replace six single family dwellings, along with private driveways and accessory structures (i.e. boathouse, garage, etc.).

The following provides a summary of each factor and associated benefit based on the baseline habitats documented in the easement language and supporting documentation.

**Biodiversity and Habitat Quality:** The 1995 Conservation Easement protected "important, ecologically stable habitat for flora and fauna." Habitats present within the property at the time of the easement included:

- Riverine habitat associated with the Black River and Pee Dee River
- Tidal marsh habitat associated with the Black River and Pee Dee River
- A managed freshwater impoundment which provides important migratory waterfowl and wading bird habitat
- Longleaf pine and wiregrass habitat which supports a colony of Red Cockaded Woodpeckers
- Mature forested riverine wetland that directly ties to the Black River
- Mature forested slope wetland
- Depressional wetland areas

While these habitats are not uncommon for coastal South Carolina, the fact that this variety of habitat is present within a single parcel is unusual for the southeastern U.S. Additionally, these habitats are continually under threat due to lack of management and by expanding residential, commercial and industrial development. The longleaf pine habitat and mature forested riverine and slope wetland habitats are subject to clearcutting and reestablishment of a similar habitat would require 70 or more years. Were

the managed waterfowl impoundment to be abandoned, this habitat could not be replaced/reconstructed due to current state and federal environmental regulations. Considering the number, type, and quality of habitats located within the tract, the value of the site when considering this factor is high.

**Cultural/Archaeological and Recreation:** As documented in the 1995 Conservation Easement itself, remnants of an 18th century formal garden including ancient camellias and specimen live oak trees, a unique, environmentally sensitive land area because it is a portion of the estuaries of the Black River and Pee Dee River, and valuable scenic vistas that can be seen from the Intra Coastal Waterway, the Black River and the Pee Dee River. The 1995 Conservation Easement provided protection to portions of the historic viewshed but permits the development of six single family dwellings through the grantor's reserved rights set forth in Article C. Activities associated with construction of the access and dwellings could potentially impact archaeological sites and would impact the overall cultural and historic upland viewshed within the site as well as the historic Pee Dee River and Black River viewsheds. For these reasons, the benefit of the 1995 Conservation Easement would be moderate when considering this factor.

**Size and Contiguity:** The 1995 Conservation Easement totaled 788 acres. Within the site, six building envelopes (each of which permitted the development of a single-family dwelling and associated infrastructure including boathouses and garages) totaling approximately 40.83 acres were established generally within the eastern half of the property. The single-family dwellings located within these building envelopes would be serviced by municipal water and septic system. Due to the location of the building envelopes, this land plan had the potential for habitat fragmentation and to create an edge effect that increases the likelihood for future impacts/conflicts associated with increased human activity. Because the 1995 Conservation Easement protects a variety of important habitats but allows for development of the six building envelopes at various locations across the site, the value of this factor was moderate.

**Location:** As discussed above, Weehaw Plantation extends from the Black River and Pee Dee River to North Fraser Street and Wedgefield Road. In 1995, properties to the south had already been developed for residential and commercial uses. For this reason, the threat of destruction, development, or adverse modifications was high and therefore the conservation value when considering this factor was high.

**Assessment of the Conservation Benefit of the 2008 Amendment:**

In December 2008, NALT amended the 1995 Conservation Easement to exclude approximately 56.75 acres located on the eastern portion of the property adjacent to North Fraser Street and Wedgefield Road (Latitude 33.414363°, Longitude -79.281827°) to facilitate the planned development of a new Georgetown Memorial Hospital Campus. With this exclusion, the Amended Conservation Area totaled approximately 732 acres. In addition, the 2008 Amendment extinguished the right to erect, maintain, repair, and replace single family dwellings, along with private driveways and accessory structures in five of the six building envelopes set forth in the 1995 Conservation Easement. As documented in the 2008 Amendment, NALT determined that "the extinguishment of the five Restricted Building Envelopes and the right to Five Dwellings will have a greater ecological benefit and further advance and protect the Conservation Purposes of the Conservation Easement than any loss of such from the removal of the Hospital Parcel from the Conservation Easement, particularly due to the superior location of the five dwellings in terms of scenic view from the Pee Dee River, Black River and Intracoastal Waterway and proximity to significant environmental features of the property including, without limitation, the critical marsh habitat, the archaeologically significant sites, and the wetlands area of the Property." It was also determined that the potential loss of scenic view from Highways 701 and S-22-325 from the development of the Hospital Parcel is insignificant in comparison to the substantial ecological, scenic, and conservation benefits of the extinguishment of the right to develop the five building envelopes.

Other than removing the 56.75 acres of the Hospital Parcel from the restrictions imposed by the 1995 Conservation Easement, and extinguishing the rights associated with the five building envelopes, the 2008 Amendment did not impact the area subject to the 1995 Conservation Easement. Based on a review of available aerial imagery, habitat conditions within the easement area following the 2008 Amendment would have been consistent with NALT's 2003 Baseline Documentation and the document titled *Habitats-Weehaw Plantation Easement*. As with the 1995 Conservation Easement, the documents and surveys associated with the 2008 Amendment confirmed that the property consisted of a natural habitat of fish, wildlife, plants, and similar ecosystems and will yield a significant public benefit. Additionally, NALT determined that extinguishing the five building envelopes and the right to develop the five dwellings would have a greater ecological benefit and further advance and protect the Conservation Purposes of the Conservation Easement more than any loss of such by unrestricting the Hospital Parcel. This is particularly due to the superior location of the five building envelopes in terms of scenic views from the Pee Dee River, Black River and Intracoastal Waterway, as well as their proximity to significant environmental features of the property including, without limitation, the critical marsh habitat, the archaeologically significant sites, and the wetlands area of the property.

The following provides a summary of each factor and associated value based on the baseline habitats documented in the 1995 Conservation Easement language and supporting documentation.

**Biodiversity and Habitat Quality:** The 2008 Amendment maintained protection of "important, ecologically stable habitat for flora and fauna." Habitats present within the property at the time of the easement amendment included:

- Riverine habitat associated with the Black River and Pee Dee River
- Tidal marsh habitat associated with the Black River and Pee Dee River
- A managed freshwater impoundment which provides important migratory waterfowl and wading bird habitat
- Mixed pine hardwood upland
- Longleaf pine and wiregrass habitat which supports a colony of Red Cockaded Woodpeckers
- Mature forested riverine wetland that directly ties to the Black River
- Mature forested slope wetland
- Depressional wetland areas

For the same reasons referenced above in relation to the 1995 Conservation Easement, these habitats are continually under threat due to lack of management and by expanding residential, commercial and industrial development, are subject to clearcutting, and certain habitats such as the managed impoundment could not be replaced/reconstructed due to current state and federal environmental regulations. Additionally, the 56.75 acres of land that was once encumbered by the 1995 Conservation Easement that is now part of the Hospital Parcel consists of mixed pine hardwood upland, which of all the habitats within the property would be the most common and least unique when considering biodiversity and habitat quality. Based on available information, there are several areas within Weehaw Plantation that provide suitable habitats to support federally listed threatened and/or endangered species. However, the Hospital Parcel (including the 56.75 acres that was formerly subject to the 1995 Conservation Easement) does not offer the same species benefits due to the condition of the property and past management practices. For example, this area does not currently contain RCW habitat due to past management practices (i.e. fire suppression) and dense understory of tree and shrub species. Considering the number, type and quality of habitats located within and protected by the 1995 Conservation Easement that were

not impacted by the 2008 Amendment, and the condition of the 56.75 acres that was excluded from the 1995 Conservation Easement because of the 2008 Amendment, the benefit of the easement boundary associated with the 2008 Amendment remains high.

**Cultural/Archaeological and Recreation:** As documented in the 1995 Conservation Easement language, remnants of an 18th century formal garden including ancient camellias and specimen live oak trees, a unique, environmentally sensitive land area because it is a portion of the estuaries of the Black River and Pee Dee River, and valuable scenic vistas that can be seen from the Intra Coastal Waterway, the Black River and the Pee Dee River. The 2008 Amendment eliminated the grantor's reserved right to develop and maintain five dwellings and accompanying infrastructure within and around the historic viewshed, which substantially reduced the potential for impact to archaeological sites and the historic upland viewshed as well as the historic Pee Dee River and Black River viewsheds. For these reasons, the benefit associated with this factor increased from moderate to high based on the impact from the 2008 Amendment.

**Size and Contiguity:** Following the 2008 Amendment the area that was subject to the 1995 Conservation Easement totaled approximately 732 acres ("Amended Conservation Area"). Within the Amended Conservation Area, the right to develop five of the six single family dwellings, associated private driveways and accessory structures (i.e. boathouse, garage, etc.) and septic services was extinguished by the 2008 Amendment. Through this action, issues and conflicts resulting from habitat fragmentation were alleviated and the potential for future impacts/conflicts associated with increased human activity was substantially reduced. In addition, the Hospital Parcel consisted of a contiguous 56.75 acres located on the eastern portion of the property adjacent to North Fraser Street and Wedgefield Road and did not result in notable impacts to size or contiguity. This loss of scenic view from Highways 701 and S-22-325 as a result of the development of the Hospital Parcel is insignificant in comparison to the substantial ecological and scenic benefits of the extinguishment of the grantor's reserved right to develop five dwellings. Because the 2008 Amendment maintained protection of over 90% of the area associated with the 1995 Conservation Easement, the reduction in size had relatively little impact on the overall value of the site when considering size. In addition, the 56.75 acres that were excluded from the 1995 Conservation Easement restrictions consisted of mixed pine and hardwood habitat adjacent to public roads and was a single contiguous parcel. Considering the minimal size and unremarkable habitat associated with the Hospital Parcel and because the 2008 Amendment restricted areas within the Amended Conservation Area that were previously authorized for residential development, which in turn greatly reduced fragmentation risk within the easement boundary, the benefit of this factor increased from moderate to high based on the impact of the 2008 Amendment.

**Location:** The eastern boundary of the of the Amended Conservation Area following the 2008 Amendment consists of the Black River and Pee Dee River and the western boundary is located approximately 1,200 feet east of North Fraser Street and approximately 500 feet east of Wedgefield Road. The threat of destruction, development, or adverse modifications for the site was no different in 2008 than it was in 1995; therefore, the conservation value benefit when considering this factor, remains high.

In summary, and as depicted on Table 1, the 2008 Amendment maintained the goals and objectives of the 1995 Conservation Easement. The functions and values associated with biodiversity and habitat quality as well as the protection priority when considering the location remained high. More importantly, the removal of the development rights associated with the five building envelopes resulted in an overall increase in value from moderate to high in relation to conserving the cultural, archaeological, and recreation values of the property as well as the property's size and contiguity.

**Table 1:** Summary of Conservation Value

FACTORS	1995 Easement	2008 Easement
Biodiversity and Habitat Quality	High	High
Cultural/Archaeological and Recreation	Moderate	High
Size and Contiguity	Moderate	High
Location	High	High

Based on this analysis, I also agree with the conclusions reached by NALT that are reflected in the 2008 Amendment: that the 2008 Amendment resulted in a greater ecological benefit to the overall Conservation Area and further advance and protect the Conservation Purposes of the 1995 Conservation Easement.

For your review, a copy of the attached information includes the following:

- Appendix A: RLC Prepared Figures/Site Maps
- Appendix B: 1995 Easement Documents
- Appendix C: 2003 Baseline Report
- Appendix D: 2008 Easement Amendment Documents
- Appendix E: 2022 Wetland Delineation
- Appendix F: 2024 Site Photographs
- Appendix G: IPaC Database Results, South Carolina Heritage Trust Database Results & Safe Harbor Agreement
- Appendix H: South Carolina Historic Properties Database Results
- Appendix I: Alton Brown, Curriculum Vitae
- Appendix J: Expert Testimony in Last Four Years

We greatly appreciate your assistance with this project. If you have any questions or require additional information, please do not hesitate to contact us at (912) 443-5896.

Sincerely,



Alton Brown, Jr.  
Senior Principal  
Resource & Land Consultants

Enclosures